

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 920

IN THE MATTER OF:)	Served February 5, 1969
)	
Joint Application of D. C. Transit)	Application No. 496
System, Inc., and Washington,)	
Virginia, and Maryland Coach Company)	Docket No. 175
for Approval of Joint Sightseeing)	
Agreement)	

By Order No. 888, served December 6, 1968, the Commission denied the joint application of D. C. Transit System, Inc. (Transit) and Washington, Virginia, and Maryland Coach Company (W. V. & M.) for approval of a joint sightseeing agreement. The denial was based on the fact that "the record is barren of any evidence upon which we might find that there is a need for the proposed joint service." (Order No. 888, at page 3.) Our order went on to recite that since no need was demonstrated for the service, the Commission did not reach the issue of whether the carriers had the requisite operating authority to tack together to form the legal basis for the agreement.

The order further required the parties of record to submit briefs on the issue of the legality of the existing sightseeing-charter arrangement between the applicants. However, the briefing schedule has been suspended pending reconsideration.

By application filed January 6, 1969, Transit and W. V. & M. jointly requested reconsideration of Order No. 888. Protestants, Alexandria, Barcroft and Washington Transit Company (A. B. & W.) and the Gray Line, Inc. (Gray Line) jointly replied in opposition to the request.

The applicants' position is essentially as follows: Section 7a of Article XII of the Compact permits them to establish through routes and joint fares without the approval of the Commission. Hence, they claim they are not required to seek Commission approval for this agreement or to justify it--in other words, applicants assert that they need not show any need for the service. The applicants also take the position that the record of evidence does contain a showing of definite need for the proposed service. In short, say the applicants, the Commission had no authority to deny approval for this agreement and the Commission's sole authority in this situation is limited to requiring the applicants to file the applicable tariffs. In reply, A. B. & W. and Gray Line support the findings and conclusions of the Commission, arguing that Section 7a of Article XII of the Compact does not limit the Commission's jurisdiction; that the Compact requires Commission approval for the service herein proposed; and that the evidence of record fails to indicate any need for the proposed operation.

The evidence of record, the Commission's Order, the application for reconsideration, and the reply have been carefully considered.

We turn, first, to the applicants' initial contention that Section 7a, Article XII of the Compact, gives them the right to establish a joint sightseeing service without Commission approval. At the hearing applicants strenuously espoused the doctrine that our approval of the joint venture was a jurisdictional necessity. We agreed, but denied the application on the ground that the applicants had failed to adduce substantial evidence that any need existed for their joint service. It is implicit in our order that the record was devoid of any substantive evidence either for a need for the service or the ramifications which would result therefrom.

Applicants now switch their position in an attempt to evade the consequences of the decision. Thus, on the face of this record applicants' position is contradictory and untenable. A party invoking the jurisdiction of the Commission for affirmative relief is estopped from later attacking the very jurisdiction it has invoked. This is not to say that a party may confer jurisdiction on the Commission merely by filing an application.

The doctrine of estoppel does however become applicable against a party who consistently asserts and invokes the jurisdiction of the Commission throughout a proceeding, then, having lost its case, disclaims the existence of that very jurisdiction.

As to the statutory language itself, we do not view Section 7a as a limitation on the Commission's authority; rather, it merely permits the establishment of such services. The section does not prohibit the Commission from requiring prior approval. And this is just exactly what would have to be put forth in the clearest and most overt language were applicants correct. Regulatory statutes are construed liberally to eliminate the evils and effectuate the aims set forth therein; limitations of the Commission's authority are not easily implied. Generally, such limitations are expressly stated. At any rate, the realities of the situation reveal the fallacies in the applicants' position. For instance, were applicants correct, the area's carriers could completely reorganize or revolutionize the area's transit scheme by utilizing such arrangements. More to the point, such unapproved agreements could entirely emasculate the criteria of the public convenience and necessity. For one thing, the Commission would be left powerless to promulgate and regulate traffic patterns; for another, the remaining carriers could be subjected to unenvisioned competitive forces, thus possibly endangering their financial stability and their ability to provide any service at an acceptable standard. Such a result is unthinkable and we reject the applicants' position.

Applicants cited Henry Lee Eyre, Jr. Extension-Damascus, Maryland, 106 MCC 851 and DeNure Common Carrier Application, 61 MCC 684, to support their position; in addition, they refer to Section 21, Article XII, of the Compact, seemingly indicating that the above-cited I. C. C. cases are binding on this Commission. This is not the case. Section 21 merely preserves the effectiveness and enforceability of orders of the I. C. C. and other agencies; their rules were effective at the creation of this Commission until the Commission provided otherwise.

The principles expounded in those decisions are not binding upon this Commission. It has its own power to promulgate and establish principles different from and independent of those of the I. C. C. See Alexandria, Barcroft and Washington Transit Co. v. WMATC, 323 F2d.777 (4th Cir. 1963). Neither Eyre nor DeNure are in point with the matter before us.

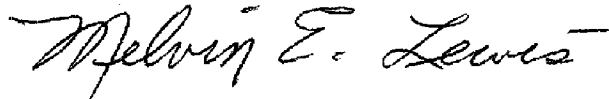
Having determined that the applicants must receive prior Commission approval for the operation proposed herein, we now turn to evaluate the applicants' assertion that the Commission erred in failing to find any showing of need. We have carefully examined the record. Other than some general testimony to the effect that some motels have contacted the applicants requesting this service, we can detect absolutely nothing whatsoever which can be construed as substantiating any kind of need. In our opinion, something more is required than such vague and unconfirmed hearsay testimony. For example, what volume of traffic is anticipated? Where will it be originated? What will be the financial results of the proposed operation on the two carriers? Is the proposed division of revenues and expenses fair and compensatory? No reason is given why such data was not originally given, and applicants do not assert that they are prepared to supply such evidence now. Thus, the lack of evidence of record completely supports our prior determination that the applicants have failed to meet their burden of proving that the proposed service would be consistent with the public interest.

In our opinion, applicants' contentions are without merit. Many of them fail to meet that degree of specificity required by Section 16 of the Compact. For one example, stark assertions are made that the Commission has erred. Just how, why, or in what manner is not related; consequently, the exact nature of the error is not discernible from the pleading. Moreover, applicants have failed to advance any grounds of substantive worth not already fully considered and dealt with in Order No. 888.

Accordingly, the Commission is of the opinion and finds that the application for reconsideration should be denied.

THEREFORE, IT IS ORDERED that the joint application of D. C. Transit System, Inc. and Washington, Virginia, and Maryland Coach Company, for reconsideration of Order No. 888 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in cursive script that reads "Melvin E. Lewis". The signature is written in dark ink and is positioned above the printed name and title.

MELVIN E. LEWIS
Executive Director